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ABSTRACT

This document describes Wisconsin's new law requiring the consent of a minor's parent or adult relative in order for a physician to perform an abortion on a minor. Part I describes highlights of the new law, including the consent requirement, exemptions, and court bypass procedure. Part II gives the background of the law, including incidence of abortion and childbirth to minors in Wisconsin and a history of laws relating to abortion. Part III describes the law, focusing on legislative intent, consent requirements, exceptions to consent requirements, a definition of abortion, the judicial bypass procedure, penalties, duties of county departments of social services, and the effective date. Part IV presents highlights of key United States Supreme Court decisions relating to parental involvement in a minor's abortion. Part V describes parental involvement in other states, including states with consent requirements, states with notification requirements, states that encourage parental involvement, and states with no parental involvement requirements. Two tables are appended, one of which lists states with parental consent statutes while the other lists states with parental notification statutes. (ABL)

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NEW LAW REQUIRING ADULT CONSENT FOR A MINOR'S ABORTION (1991 WISCONSIN ACT 263)

Information Memorandum 92-12

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June 15, 1992

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Information Memorandum 92-12*

NEW LAW REQUIRING ADULT CONSENT FOR A MINOR'S ABORTION (1991 WISCONSIN ACT 263)

INTRODUCTION

This Information Memorandum provides a description of Wisconsin's new law requiring the consent of a minor's parent or adult relative in order for a physician to perform an abortion on a minor. The new law, enacted as 1991 Wisconsin Act 263, takes effect on July 1, 1992.

Copies of Act 263 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

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* This Information Memorandum was prepared by Pam Russell, Senior Staff Attorney, Legislative Council Staff.

PART I

HIGHLIGHTS OF NEW CONSENT LAW (1991 WISCONSIN ACT 263)

A. CONSENT REQUIREMENT

Effective July 1, 1991, a physician may not perform an abortion on a girl under the age of 18 years unless the physician has received the written consent of the minor and any one of the following persons:

1. One of the minor's parents or the minor's guardian or legal custodian, if one has been appointed.

2. One of the minor's adult family members (grandparent, aunt, uncle, brother or sister) who is at least 25 years of age.

3. One of the minor's foster parents, under certain circumstances.

B. EXEMPTIONS

The consent requirements do not apply in any of the following circumstances:

1. A medical emergency exists.

2. The minor obtains a waiver from a judge, using a "judicial bypass" procedure.

3. The minor is an "emancipated minor."

4. The pregnancy is the result of incest, which must be reported by the physician as child abuse.

5. The pregnancy is the result of a sexual assault, which must be reported by the physician as child abuse.

6. The minor's parent has abused the minor and the physician makes a child abuse report.

7. The minor is likely to commit suicide rather than seek an adult's consent, as certified by a psychologist or psychiatrist.

C. COURT BYPASS PROCEEDING

1. If the minor wishes to obtain a waiver of the consent requirement, the minor may petition any judge in the state for a waiver.

2. A member of the clergy may assist the minor in filing a bypass petition, and, if so, a judge may rule on the petition based on the clergy member's affidavit supporting the petition. The judge may, in his or her discretion, grant the petition in this case without requiring the minor to appear at a hearing.

3. A judge must issue an order granting or denying a bypass petition not more than four calendar days after the petition was filed, and not more than three calendar days after the initial appearance.

PART II

BACKGROUND

A. INCIDENCE OF ABORTION AND CHILDBIRTH AMONG MINORS IN WISCONSIN

According to data from the Center for Health Statistics in the Department of Health and Social Services (DHSS), girls under age 18 accounted for 10% of the total reported induced abortions (1,641 of 16,848 total) in Wisconsin in 1990, the most recent year for which data are available. Teens ages 18 and 19 accounted for 15% of the total (2,422 of 16,848). Table 1 shows the number of induced abortions for girls age 17 and under in 1987 to 1990. [Information on abortions by age group was not collected prior to 1987.]

Compared with other age groups, girls under age 18 having abortions were least likely to have the abortion within the first eight weeks of pregnancy and more likely than other age groups to have an abortion 16 or more weeks after conception.

TABLE 1

REPORTED INDUCED ABORTIONS, BY AGE
1987 - 1990

YEAR	AGE UNDER 15	AGE 15-17	TOTAL ALL AGES	PERCENT OF TOTAL UNDER 18
1987	134	2,050	17,318	12.6%
1988	126	2,001	17,986	11.8
1989	132	1,796	17,575	10.9
1990	139	1,502	16,848	9.1

SOURCE: DHSS, Division of Health, Center for Health Statistics.

Table 2 shows the number of live births to adolescent mothers (age 17 and under) from 1960 to 1990.

According to the DHSS Center for Health Statistics, the birth rate among adolescents in Wisconsin has been stable since 1960; the proportion of births to adolescents, compared with births to all teenagers, rose substantially from 1960 to 1987 (23% to 36%), largely due to the decrease in the rate of births among teenagers ages 18 and 19.

TABLE 2

BIRTHS TO ADOLESCENT MOTHERS AGE 17 AND UNDER
1960 - 1990

YEAR	NUMBER	BIRTHS TO ADOLESCENTS		
		RATE PER 1,000**	AS PERCENT OF ALL BIRTHS	AS PERCENT OF ALL TEENAGE BIRTHS
1960	2,084	23	2.1%	22.7%
1970	2,609	19	3.4	26.9
1975	3,360	22	5.2	35.8
1980	2,834	20	3.8	30.8
1985	2,512	22	3.4	33.5
1986	2,461	*	3.4	34.5
1987	2,483	22	3.5	35.9
1988	2,455	*	3.5	35.4
1989	2,557	*	3.5	35.2
1990	2,485	26	3.4	33.5

* Population data for this age group is not available for these years.
** Based on total population of girls age 15-17.

SOURCE: DHSS, Division of Health, Center for Health Statistics.

B. HISTORY OF WISCONSIN'S LAWS RELATING TO ABORTIONS PERFORMED ON MINORS

1. Common Law Origins; Medical Treatment Generally

Under long-standing common law (court-made, rather than legislatively enacted) principles of informed consent, the consent of a minor's parent or parents is generally required before a physician can provide medical treatment to a minor. The foundation for the parental consent requirement is two-fold. First, a minor is presumed, for most purposes, to be legally incapable of consenting to, or refusing, medical treatment on his or her own behalf, as well as incapable of

entering into contractual relationships and other legal indicia of adulthood. Second, parents are vested with the right to decide what is in their child's best interest.

As a result of the interplay of these two principles, physicians generally do not provide medical treatment to a child without the consent of the child's parent or parents. Exceptions to this general rule apply if: (a) the child is an "emancipated" minor (i.e., the child is no longer dependent on his or her parent or parents for support); or (b) an emergency situation exists where a treatment provider must act in the child's best interest without parental consent to prevent further endangering the child's life or health.

2. State Statutory Exceptions to the Parental Consent Requirement For Medical Treatment

Wisconsin does not have a general statutory prohibition against medical treatment of a minor without the consent of the minor's parent or parents. However, physicians and other health care providers abide by the common law principle requiring parental consent for medical treatment of minors, unless a statutory or common law exception exists. Failure to obtain parental consent is not a criminal offense, but the treatment provider subjects himself or herself to possible civil liability for negligence and intentional tort for providing treatment without the requisite informed consent.

Wisconsin has a number of statutory exceptions to the general common law rule requiring parental consent for the medical treatment of a child. As a general rule, the statutory exceptions to the rule of parental consent recognize circumstances where: (a) minors have a recognized privacy interest that may conflict with the parent's right to decide what is in the child's best interest; and (b) "mature" minors may make their own determinations regarding certain types of treatment without parental consent. These statutory exceptions or deviations from the general rule of parental consent exist for the following types of treatment: (a) treatment for sexually transmitted diseases [any age; s. 143.07 (1m), Stats.]; (b) abortion services, until July 1, 1992 [any age; s. 146.78 (5) (d), Stats.]; (c) bone marrow donation by a minor over age 12 [s. 146.34, Stats.]; (d) certain types of alcohol and drug abuse treatment of minors over age 12; [s. 51.47, Stats.]; (e) certain types of mental health treatment of minors over age 14 [ss. 51.13 and 51.61 (6), Stats.]; and (f) blood donation by minors over age 16 [s. 146.33, Stats.].

3. Prior Wisconsin Statutes Relating to Abortions Performed on Minors

The "Abortion and Prevention and Family Responsibility Act of 1985" (1985 Wisconsin Act 56) was the first legislation in Wisconsin dealing specifically with parental involvement in a minor's decision whether to have an abortion.

Act 56 stated that each hospital, clinic or other facility in which a physician performs an abortion must have a written policy regarding notification of parents or guardians of minor patients who are seeking an abortion. A copy of this policy must be given to each minor seeking an abortion and must be filed annually with DHSS. The policy must require that the hospital, clinic

or other facility personnel "strongly encourage" the minor patient to consult her parents or guardian regarding the abortion unless the minor has a valid reason for not doing so. In the latter case, the personnel must encourage the minor patient to notify another family member, close family friend, school counselor, social worker or other appropriate person.

Act 56 required all policies regarding parental notification to include information about the availability of assistance, from county agencies, for minors contemplating an abortion who wish to notify a parent or guardian. The Act stated that if a minor requests such assistance from a county agency in notifying his or her parent or guardian of the contemplated abortion, the county agency must provide assistance including, if so requested, accompanying the minor for the notification of the parent or guardian.

Act 56 also prohibited a hospital, clinic or other facility in which abortions are performed, and any affiliated persons, from notifying a parent or guardian without the written consent of the minor and stated that this must be included in the written policy provided to the minor [ss. 46.24 and 146.78 (1) (b) and (5), Stats.].

PART III

DESCRIPTION OF 1991 WISCONSIN ACT 263

A. LEGISLATIVE INTENT AND FINDINGS

Act 263 states that the legislative intent of enacting the parental consent requirement is to further the general purposes in ch. 48, Stats. (the Children's Code), and, in particular, to further important and compelling state interests in:

1. Protecting minors against their own immaturity.

2. Fostering the family structure and preserving it as a viable social unit.

3. Protecting the rights of parents to rear minors who are members of their households.

The Act also includes the following legislative findings:

1. Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.

2. The medical, emotional and psychological consequences of abortion and childbirth are serious and can be lasting, particularly when the patient is immature.

3. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or having an abortion are not necessarily related.

4. Parents ordinarily possess information essential to a physician's exercise of the physician's best medical judgment concerning a minor.

5. Parents who are aware that their minor is pregnant or has had an abortion may better ensure that she receives adequate medical attention during her pregnancy or after her abortion.

6. Knowledge of a minor's pregnancy and parental consent are usually desirable and in the best interest of the minor.

B. CONSENT REQUIREMENTS

Act 263 prohibits any person from performing or inducing an abortion on or for an unemancipated minor unless: (1) the person is a physician; and (2) the person has received and made part of the minor's medical record the written consent of the minor and any of the following individuals:

a. One of the minor's parents, or the minor's guardian or legal custodian, if one has been appointed;

b. One of the minor's foster parents, if: (1) the minor has been placed in a foster home; and (2) the minor's parent or parents have signed a waiver granting the DHSS, a county department of social services or the foster parent or parents the authority to consent to medical services or treatment on behalf of the minor.

c. An adult family member of the minor.

For purposes of this option, an adult relative acting in the place of a parent must be a grandparent, aunt, uncle, sister or brother who is at least 25 years of age.

For purposes of the parental consent requirement, a minor is any person under the age of 18.

C. EXCEPTIONS TO CONSENT REQUIREMENTS

The new law contains seven exceptions to the parental consent requirement. Parental consent, or one of the alternatives to parental consent, is not required if any one of the following applies:

1. Medical Emergency. The physician believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion.

2. Court Bypass. The minor obtains a waiver of the parental consent requirement from the court, using the judicial bypass procedure outlined under Section E, below.

3. Emancipated Minor. The minor is an "emancipated minor." The Act defines "emancipated minor" as a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority.

4. Pregnancy Resulting From Incest. The minor provides the physician with a written statement, signed and dated by the minor, that the pregnancy is the result of sexual intercourse or sexual contact with a person who is a relative of the minor; the minor's guardian; the minor's legal custodian; or a person who resides or has resided regularly or intermittently in the same dwelling with the minor. For purposes of this exception, "relative" includes parent, grandparent, stepparent, brother, first cousin, second cousin, nephew, uncle, step-grandparent, stepbrother, half-brother, brother-in-law or stepuncle.

Upon receipt of a written statement under this provision, the physician must report, as a suspected case of child abuse, the fact that the sexual intercourse occurred. The report may be

made either to the appropriate law enforcement authority or to the county department of social services.

5. Abusive Parent. The minor provides the physician with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor has abused the minor. The physician must place the statement in the minor's medical record and report the child abuse to the appropriate law enforcement agency or the county department of social services. For purposes of this exception, "abuse" means: (a) physical injury inflicted on the minor by other than accidental means; (b) sexual intercourse or sexual contact with the minor; (c) sexual exploitation of the minor; (d) permitting, allowing or encouraging the minor to engage in prostitution; (e) emotional damage inflicted on the minor; or (f) forcing the minor to view sexually explicit conduct.

6. Suicide. A psychiatrist or licensed psychologist states in writing that he or she believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than approach her parent, guardian, legal custodian or adult family member acting in the place of a parent for consent, or file a judicial bypass petition.

7. Pregnancy Resulting from Sexual Assault. The minor provides to the physician a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in which the minor did not indicate a freely given agreement to have sexual intercourse. The physician must place the sworn statement in the record and report the alleged sexual assault to the appropriate law enforcement or county social services agency. The exception includes a reference to possible penalties for false swearing under s. 946.32 (2), Stats. Under that provision, any person who, under oath or affirmation, makes or subscribes a false statement which the person does not believe is true is guilty of a Class A misdemeanor, subject to a fine not to exceed $10,000, imprisonment not to exceed nine months, or both. Presumably, a minor who violates this provision would be dealt with as a delinquent under the Children's Code [see ss. 48.02 (3m) and 48.12 (1), Stats.].

D. DEFINITION OF ABORTION

For purposes of the parental consent requirement, "abortion" is defined under the new law as the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy after implantation of a fertilized human ovum of a minor, and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

E. JUDICIAL BYPASS PROCEDURE

The Act sets forth a judicial bypass procedure for a minor who wishes to seek a waiver of the parental consent requirement. The judicial bypass procedure contains the following major elements:

1. Petition. The new law creates requirements for a petition filed to commence a parental consent waiver proceeding. The Act requires the petition to be filed with any judge. The petition must set forth the name "Jane Doe," in lieu of the minor's real name, and the minor's date of birth. The use of the name "Jane Doe" is intended to provide confidentiality to the minor.

The petition must also contain information regarding the pregnancy of the minor; information regarding the person who is to perform the abortion; a request for waiver of the consent requirements, along with a statement of facts underlying the request; an acknowledgement that the minor has been fully informed of the risks and consequences of abortion and the risks and consequences of carrying the pregnancy to term; and the place and manner of future notification of the minor regarding court proceedings until legal counsel for the minor has been appointed.

The Act requires the Director of State Courts to provide simplified forms for use in filing the judicial bypass petition. The Act prohibits the clerk of court in each county from charging a fee for filing the petition; and requires juvenile court intake workers to assist the minor in filing the petition, if requested.

2. Counsel and Guardian ad Litem. At the initial court appearance after the petition is filed, which must be held on the day the petition is filed or the next calendar day, the Act requires the judge to appoint legal counsel for a minor who is not already represented. A minor is entitled to representation by the State Public Defender, without having been determined to be indigent.

At the initial appearance, to be held in the judge's chambers, the court may, but is not required to, appoint a guardian ad litem to represent the best interests of the minor. The function of the guardian ad litem is to advise the court on whether the minor is sufficiently mature and well-informed to make her own decision regarding an abortion, or whether an abortion is in the minor's best interest, if the court determines that the minor is not mature enough to make her own decision.

The court must schedule a hearing and immediately notify the minor, the minor's counsel and the guardian ad litem of the date, time and place of the hearing. If the minor waives immediate notice, the notice must be provided at least 24 hours before the time of the hearing. Notification of the minor must be made through the minor's legal counsel, to preserve confidentiality.

3. Hearing and Determination. The Act requires the hearing on the waiver petition to be confidential. The hearing must be held in the judge's chambers. After receiving and considering the evidence, the court is required to grant the petition for waiver of the consent requirement if the court finds that either of the following circumstances exists: (a) the minor is mature and well-informed enough to make the abortion decision on her own; or (b) the performance or inducement of the abortion would be in the minor's best interest. No parent, or guardian or legal custodian of the minor, if one has been appointed, foster parent or adult relative acting in the place of a parent may be permitted to be present at or intervene in the action or give evidence at the hearing.

4. Clergy Member Assistance. The Act permits an ordained member of the clergy to file the minor's court bypass petition on her behalf. If the member of the clergy files the petition, he or she must also file an affidavit stating the following: that the member of the clergy has met

personally with the minor and has explored with the minor the alternative choices available to the minor for managing the pregnancy (specifically including carrying the pregnancy to term and keeping the infant, carrying the pregnancy to term and placing the infant with a relative or with another family for adoption or having an abortion); that the member of the clergy has discussed with the minor the possibility of involving the minor's parent, legal custodian, guardian or adult family member in the decision whether to have an abortion; and that the clergy member has discussed whether the involvement of one of these persons in the decision is in the minor's best interests.

The member of the clergy would be involved in addition to, not in lieu of, the legal counsel for the minor appointed by the court or retained by the minor.

The judge in the bypass case would be authorized to make his or her determination whether to grant or deny the petition based on the affidavit or, in the judge's discretion, may require the minor to attend an interview with the court in chambers before making that determination.

For purposes of this provision, "member of the clergy" is defined as a spiritual adviser of any religion, whether the adviser is termed priest, rabbi, minister of the gospel, pastor, reverend or any other official designation.

The Act specifies that its provisions, including the provisions permitting the involvement of members of the clergy in a bypass proceeding or appeal, are severable from the remainder of the provisions in the event that they are found by a court to be unconstitutional or invalid.

5. Time Limits; Trial Court Determination. The Act requires the court, after holding the hearing on the petition, to make its determination and issue an order granting or denying the petition for waiver of the consent requirement within three calendar days after the initial appearance, unless the minor consents to an extension of this time period. In the event that the minor requests the substitution of a judge, the Act requires the newly-assigned judge to make the determination and issue the order within three calendar days after the date on which the request for substitution was filed, unless the minor consents to an extension of the time period. The order is to be effective immediately. The findings of fact, conclusions of law and final written order must be prepared and filed with the clerk of court within 24 hours after the determination is made and the order is issued.

If the trial court fails to comply with these time limits and the minor and her legal counsel do not agree to an extension, the chief judge of the judicial administrative district in which the court is located must assign a temporary reserve judge to make a final determination. The temporary reserve judge must make the determination within two calendar days after the assignment.

If the court grants the petition, it must immediately notify the minor and the person or facility specified in the petition who intends to perform or induce the abortion that the petition has been granted. If the court denies the petition, the court must notify the minor, through her counsel, that the waiver of the parental consent requirement has been denied and must also inform the minor that she has the right to appeal the decision.

6. Appeal of Trial Court Decision. The Act allows the minor to appeal the denial of a petition for waiver of the parental consent requirement to the Court of Appeals. No other party may appeal the trial court's decision. The Court of Appeals must hear the appeal.

The Act permits a minor to initiate an appeal by filing a notice of appeal with the clerk of the trial court in which the order appealed from was entered. At the same time, the minor must notify the Court of Appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of the Court of Appeals. The clerk of the trial court is required to assist the minor in sending a copy of the notice of appeal to the clerk of the Court of Appeals. The minor must be permitted to use the name "Jane Doe" instead of her name on the notice of appeal and all other papers filed with the Court of Appeals; all papers must be kept confidential. In addition, no fee may be required for docketing an appeal.

The Act sets forth additional requirements regarding perfecting the appeal, the record on appeal and filing a transcript of the court reporter's notes. The Act specifies that legal briefs are not required to be filed in support of the appeal and that the county in which the trial court is located must cover the cost of preparing the transcript of the trial court's proceeding. The record on appeal must include a letter to the Court of Appeals from the guardian ad litem, if one was appointed by the trial court, indicating his or her position on whether the minor is mature and well-informed enough to make the abortion decision on her own and whether an abortion is in the child's best interest.

The Act requires the Court of Appeals to proceed with these cases in a manner that ensures that a decision is reached within four calendar days after the appeal has been docketed in the Court of Appeals. This time limit may be extended with the consent of the minor. The Act provides that a judgment by the Court of Appeals is effective immediately, without transmittal to the trial court. The Act also specifies that the Court of Appeals must immediately notify the minor, through her counsel, of its decision, as well as notifying the person who will perform the abortion.

The Act also provides that a petition for review of the Court of Appeals decision by the State Supreme Court may be filed. However, the Supreme Court has discretion whether to grant the petition for review.

If the Supreme Court decides to take the case on appeal, it must do so within certain time limits. The Act provides that the Supreme Court shall, by rule, provide for expedited appellate review of cases because time may be of essence regarding the performance of the abortion. The Act specifies the manner in which the Court must notify the minor and the person performing the abortion of its decision.

F. PENALTIES; CIVIL LIABILITY

Act 263 provides for civil liability and civil penalties for noncompliance with the parental consent requirement and for violation of the confidentiality requirements applicable to the court bypass proceeding, as follows:

1. Confidentiality Penalties. The Act also specifies that a person who intentionally violates the confidentiality requirements by revealing the identity of a minor who files or who has filed a court bypass petition, or who releases records relating to a bypass proceeding, is subject to a civil forfeiture of not more than $10,000.

2. Civil Forfeiture. Any person who intentionally performs or induces an abortion on or for a minor whom the person knows or has reason to know is an unemancipated minor, without consent if required under the Act, or without a waiver of the consent requirement by a court, may be required to pay a civil forfeiture of not more than $10,000.

3. Civil Liability. Under the Act, a person who intentionally violates the consent requirements is liable to the minor's parent, guardian, legal custodian or adult family member for damages arising from the abortion. Damages may include, but are not limited to, damages for personal injury and emotional and psychological distress. A plaintiff who has been awarded damages is also entitled to punitive damages if the plaintiff proves by clear and convincing evidence that the violation of the parental consent requirement was wilful, wanton or reckless. A plaintiff who recovers damages may also recover reasonable attorney fees incurred in connection with the civil action.

The Act also specifies that any court hearing in a civil forfeiture action under items 1 or 2, above, or a civil action for damages under item 3, above, is a closed hearing, unless the minor demands an open hearing and her parents, guardian, legal custodian or adult family member do not object. All court papers must be kept confidential, and must refer to the minor as "Jane Doe" and to the minor's parent, guardian, legal custodian or adult family relative by their initials.

G. DUTIES OF COUNTY DEPARTMENTS OF SOCIAL SERVICES

The Act specifies that any minor who is pregnant and seeking an abortion, and any minor who has had an abortion, may receive counseling from a counselor of her choice. A county department of social services may refer the minor to a private counselor.

For purposes of this provision, "counselor" is defined as a physician, including a psychiatrist, a licensed psychologist or an ordained member of the clergy, but does not include a person who is employed by, or otherwise affiliated with, a reproductive health care facility, a family planning clinic or a family planning agency, any person affiliated with the performance of abortions, except abortions performed to save the life of the mother, or any person who may profit from giving advice to seek an abortion.

Also, if a minor who is contemplating an abortion requests assistance from a county department in seeking consent of the minor's parent, guardian or legal custodian of the contemplated abortion, or in seeking a waiver from the court from the consent requirement, the county department is required to provide assistance, including, if so requested, accompanying the minor as appropriate.

The Act repeals provisions of current s. 146.78, Stats., which require a physician performing an abortion to provide a minor with information concerning the clinic's written policy regarding notification of parents or guardians of minor patients who are seeking an abortion. The Act also amends current law to require the clinic to provide the minor with information concerning the availability of services to assist the minor in seeking the consent of her parent, guardian, legal custodian or an adult family member who is a person acting in the place of a parent, or in assisting a minor who wishes to seek a court waiver from the consent requirements.

H. EFFECTIVE DATE

The effective date of the new consent requirements and related provisions is July 1, 1992.

PART IV

HIGHLIGHTS OF KEY U.S. SUPREME COURT DECISIONS RELATING TO PARENTAL INVOLVEMENT IN A MINOR'S ABORTION

1976: Planned Parenthood of Central Missouri v. Danforth. The first U.S. Supreme Court decision examining the constitutionality of parental consent statutes. The Court determined that states could not allow parents to veto a minor's decision to have an abortion if the minor was mature enough to make the decision herself. A woman's right to decide whether to have an abortion, established in Roe v. Wade in 1973, also applies to minors; that right may be circumscribed by the rights of parents to make decisions on behalf of their children who are not sufficiently mature to make their own decisions [428 U.S. 52 (1976)].

1979: Bellotti v. Baird. If a state chooses to require notice to, or consent by, the minor's parents, the state must also provide a procedure whereby the minor may demonstrate her ability to make the abortion decision without notice to her parents. This decision set forth the basic outline for a "judicial bypass" procedure [443 U.S. 622 (1979)].

1981: H.L. v. Matheson. The Court ruled that states may require doctors consulted by some young girls--those still dependent on their parents and too "immature" to decide such matters for themselves--to try to inform parents before performing a requested abortion [450 U.S. 398 (1981)].

1983: City of Akron v. Akron Center for Reproductive Health. The Court provided additional clarification on the validity of parental notification and consent statutes. Bypass procedures may not involve notification of a minor's parents that a bypass petition has been filed; states must specify the procedures for the minor to follow in obtaining the court order [462 U.S. 416 (1983)].

Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft. The Court upheld a consent law and approved the time frame for the bypass proceeding as being constitutionally sufficient to ensure an expedited appeal process of a lower court decision denying the minor's bypass petition [462 U.S. 476 (1983)].

1990: Ohio v. Akron Center for Reproductive Health. The Court upheld a one-parent notification requirement with a judicial bypass proceeding, including a requirement that the physician provide 24 hours notice to one parent (or 48 hours constructive notice by registered mail) [110 S. Ct. 2972 (1990)].

Hodgson v. Minnesota. The Court found unconstitutional a law requiring a minor to notify both parents of an intended abortion, but which did not provide a judicial bypass for a minor to obtain a waiver of the notification requirement; the Court also upheld the same two-parent notification requirement with a bypass proceeding [110 S. Ct. 2926 (1990)].

PART V

PARENTAL INVOLVEMENT LAWS OF OTHER STATES

State laws requiring parental involvement in a minor's decision to have an abortion generally fall into one of four major categories: states requiring parental consent before a minor may obtain an abortion; states requiring that a minor's parents be notified before the minor may obtain an abortion; states which require or encourage parental involvement other than by means of parental notice or consent; and states with no requirements for parental involvement prior to a minor's abortion.

A. STATES WITH CONSENT REQUIREMENTS

Table 3, found in Appendix A, sets forth the states that have statutes requiring parental consent prior to a minor's abortion. A total of 26 states, including Wisconsin, have such a statute currently; however, as of the date of this memorandum, these laws are enforced in only 10 states (Alabama, Indiana, Louisiana, Massachusetts, Michigan, Missouri, North Dakota, Rhode Island, South Carolina and Wyoming). [As noted earlier, Wisconsin's new adult consent law goes into effect on July 1, 1992.] In 15 states, the laws have been enjoined by a state or federal court, have been declared invalid by an attorney general or are otherwise unenforceable (Alaska, Arizona, California, Colorado, Delaware, Florida, Kentucky, Mississippi, New Mexico, North Carolina, Pennsylvania, South Dakota, Tennessee, Virginia and Washington). Many of the laws of these states were enacted prior to various rulings by the U.S. Supreme Court setting forth constitutionally required components of a parental consent or notification law [i.e., Bellotti v. Baird, 443 U.S. 622 (1979); H.L. v. Matheson, 450 U.S. 398 (1981); Hodgson v. Minnesota, 110 S. Ct. 2926 (1990), and Ohio v. Akron Center for Reproductive Health, 110 S. Ct. 2972 (1990)].

B. STATES WITH NOTIFICATION REQUIREMENTS

Table 4, found in Appendix B, sets forth states which require parental notification prior to a minor's abortion. A total of 13 states have such a statute; of these states, eight have parental notification requirements that are currently enforced (Arkansas, Georgia, Kansas, Minnesota, Nebraska, Ohio, Utah and West Virginia); and five of the states have notification statutes that are not currently enforced (Idaho, Illinois, Montana, Nevada and Tennessee). Tennessee has both a parental consent and a parental notification law, although neither is currently enforced.

C. STATES THAT ENCOURAGE PARENTAL INVOLVEMENT

Three other states have statutes relating to parental involvement in a minor's abortion decision, but which are broader than the typical parental consent or notification statutes of other states. These include Connecticut, Maine and Maryland.

1. Connecticut

The Connecticut statute, which became effective October 1, 1990, requires that, prior to the performance of an abortion upon a minor under the age of 16, a physician or counselor must provide pregnancy information and counseling in a manner and language that will be understood by the minor. The information must be objective, noncoercive and complete and must include alternative choices available for managing the pregnancy. The physician or counselor must discuss the possibility of involving the minor's parents, guardian or other adult family member in the minor's decision-making. A counselor may include a psychiatrist, a licensed psychologist, a social worker, a marriage and family therapist, an ordained member of the clergy, a physician's assistant, a nurse-midwife, a certified guidance counselor, a registered professional nurse or a practical nurse.

After receiving the counseling, the minor must sign a form stating that she has received the information and has discussed with the person providing the information the possibility of involving the minor's parents, guardian or other adult family member in the minor's decision-making about the pregnancy.

2. Maine

The parental involvement statute in Maine includes four alternatives under which a physician may perform an abortion upon a minor:

a. The physician has received the informed, written consent of the minor and one parent, guardian or adult family member;

b. The physician has secured the informed, written consent of the minor and has determined that the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

c. The minor has received statutorily prescribed information and counseling; or

d. The minor provides the physician with a court order for the purpose of consenting to the abortion. The court order may be issued based on one of two findings by the court: (1) that the minor is endowed with majority rights for the sole purpose of consenting to the abortion; or (2) that the abortion is in the minor's best interest.

The Maine statute was enacted in 1989.

3. Maryland

The Maryland law requires notification of one parent before an abortion may be performed on a minor under the age of 18. However, the notification requirement may be waived by her physician if the physician decides that the minor is mature enough to make the decision or that it would not be in her best interest to notify a parent. The physician may also waive the notification requirement if there is a likelihood of physical or mental abuse because of notification.

This statute has not gone into effect as of the date of this memorandum; a nonstatutory provision enacted as part of the parental notice legislation provides that these provisions would go into effect on July 1, 1991, unless the issue is called to a public referendum. Petitions for a referendum have been filed and a statewide vote on the issue will be held in the Fall of 1992. Pending the outcome of the referendum, the notification provisions are in abeyance.

D. STATES WITH NO PARENTAL INVOLVEMENT REQUIREMENTS

Finally, there are currently nine states that have no statutory parental involvement law. These states are Hawaii, Iowa, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Texas and Vermont. In addition, parental involvement is not required for abortions performed on minors in the District of Columbia.

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TABLE 3: STATES WITH PARENTAL CONSENT STATUTES

STATE	YEAR ENACTED	CURRENT STATUS	NO. OF PARENTS	COURT BYPASS	COMMENTS
Alabama	1987	Enforced; upheld in state court (1988).	1	Yes	a. If pregnancy is result of incest, written notice to mother is sufficient. b. Exception provided if abortion is necessary for the health, safety or well-being of minor.
Alaska	1970	Not enforced; declared unconstitutional by State Attorney General (1976, 1981).	1	No	
Arizona	1989	Not enforced; enjoined by federal court (1989).	1	Yes	
California	1987 (effective 1988)	Not enforced; state court declared violation of State Constitution (1987; affirmed by court of appeals, 1989; similar ruling issued by Superior Court in 1992).	1	Yes	
Colorado	1963	Not enforced; declared unconstitutional by federal court (1975).	1	No	
Delaware	1969	Not enforced; Attorney General declared policy not to enforce (1977).	1 or 2	No	Consent of parent or parents with whom minor resides; if resides with neither, must have consent of one parent.
Florida	1988	Not enforced; state court declared violation of State Constitution (1989).	1	Yes	Court may waive consent if minor shows good cause why she cannot seek parental consent. Good cause may include fear of physical or emotional abuse; mature minor; parent has unreasonably withheld consent.

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TABLE 3, CONTINUED

STATE	YEAR ENACTED	CURRENT STATUS	NO. OF PARENTS	COURT BYPASS	COMMENTS
Indiana	1984	Enforced.	1	Yes	Physician may petition court to waive consent if requirement would have an adverse effect on the minor or her pregnancy.
Kentucky	1982	Not enforced; enjoined by federal court (1984); Act amended (1984 and 1986); enjoined by federal court (1986-1991); briefly enforced, in part (1991); new stay issued by federal court of appeals (July 1991); pending appeal to U.S. Supreme Court.	2 (1)	Yes	Signed, notarized consent of both parents if available; otherwise, one parent. Federal court found language "both parents, if available" vague and unenforceable and the notarization requirements unduly burdensome.
Louisiana	1981	Enforced; upheld by federal court (1984).	1	Yes	Consent must be notarized.
Massachusetts	1980	Enforced.	2	Yes	Consent of one parent sufficient if parents divorced or one parent deceased or cannot be reached within a reasonable period of time or with reasonable effort. In granting or denying consent, parents shall consider only their child's best interests.
Michigan	1990 (effective 1991)	Enforced; upheld in state court (1991).	1	Yes	
Mississippi	1986	Not enforced; enjoined by federal court (1986).	1	Yes	Incest exemption; automatic waiver granted if court fails to act within 72 hours after bypass petition filed.
Missouri	1979	Currently enforced; enjoined by federal courts 1980-1986.	1	Yes	
New Mexico	1969	Not enforced.	1	No	
North Carolina	1967	Not enforced; declared unconstitutional by federal court (1985).	1	No	

TABLE 3, CONTINUED

STATE	YEAR ENACTED	CURRENT STATUS	NO. OF PARENTS	COURT BYPASS	COMMENTS
North Dakota	1981	Enforced.	2	Yes	Does not authorize court to waive consent if abortion is in minor's best interest; if minor not mature, court may order parents to attend hearing to advise and counsel minor and aid court in determination.
Pennsylvania	1982; amended 1988 and 1989 (effective 1990)	Not enforced; enjoined by federal court (1988 and 1990); appeal to U.S. Supreme Court pending.	1	Yes	Requires informed consent of parent; if parent unavailable, consent of person standing in loco parentis sufficient.
Rhode Island	1982	Enforced.	1	Yes	
South Carolina	1990	Enforced.	1	Yes	Applies to minors under 17; incest exemption; consent of one parent or grandparent.
South Dakota	1973	Not enforced.	1	No	
Tennessee	1988	Not enforced; enjoined by federal court (1989); state court found consent law repealed by passage of notification law (1991).	2	Yes	See Table 2.
Virginia	1970	Not enforced.	1	No	
Washington	1970	Not enforced; enjoined by state court (1975) on state and federal constitutional grounds.	1	No	
Wisconsin	1992 (effective July 1, 1992)		1	Yes	Adult family member over age 25 may provide consent; member of clergy may be minor's proxy in bypass proceeding.
Wyoming	1989	Enforced.	1	Yes	Also includes 48-hour waiting period after actual notice; exemption for minors in active military service.

TABLE 4: STATES WITH PARENTAL NOTIFICATION STATUTES

STATE	YEAR ENACTED	CURRENT STATUS	NO. OF PARENTS	COURT BYPASS	COMMENTS
Arkansas	1989	Enforced.	2	Yes	48-hour waiting period after notice.
Georgia	1987 (amended 1988, 1991)	Enforced (previously enjoined by federal court, 1987, 1988, injunction lifted 1991).	1	Yes	24-hour waiting period after personal notice; 48-hour waiting period after notice by mail.
Idaho	1983	Not enforced.	2	No	24-hour waiting period after notice.
Illinois	1983 (effective 1984)	Not enforced; enjoined by federal court (1984); affirmed (1989).	2	Yes	24-hour waiting period after notice.
Kansas	1992	Enforced (enacted April 1992).	1	Yes; adult may petition on behalf of minor; minor need not appear.	Pre- and post-abortion information and counseling required; parent or adult must attend pre-abortion counseling session.
Minnesota	1981	Enforced (1981-1986); enjoined (1986-1990); law upheld by U.S. Supreme Court (1990).	2	Yes	48-hour waiting period after notice.
Montana	1974	Not enforced.	1	No	
Nebraska	1991	Enforced; supersedes 1981 law enjoined by federal court (1983).	1	Yes	
Nevada	1985	Not enforced; enjoined by federal court (1985).	1	Yes	
Ohio	1985 (effective 1986)	Currently enforced; enjoined (1986 to 1990); law upheld by U.S. Supreme Court (1990).	1	Yes	

TABLE 4, CONTINUED

STATE	YEAR ENACTED	CURRENT STATUS	NO. OF PARENTS	COURT BYPASS	COMMENTS
Tennessee	1989	Not enforced, as of September 1991; being reviewed by Attorney General.	2	No	Notification law supersedes consent statute. Law specifies that, despite the notice requirement, a parent's objection to the abortion may not prevent or alter the minor's decision in any way.
Utah	1974	Enforced currently; enjoined by federal court (1980-1981); later upheld by federal court (1986).	2	No	Law being applied to require notification of one parent only.
West Virginia	1984	Enforced.	1	Yes	A second physician may waive the notice requirement if the minor is mature or the abortion is in her best interest.